

**INFORMATION EXCHANGE AGREEMENT  
BETWEEN  
THE CENTERS FOR MEDICARE & MEDICAID SERVICES  
AND  
ISSUERS OF QUALIFIED HEALTH PLANS OFFERED  
THROUGH STATE-BASED MARKETPLACES**

**CMS IEA No. 2017-45A**

**Effective Date: August 10th, 2019**

**I. PURPOSE, LEGAL AUTHORITIES, and DEFINITIONS**

**A. Purpose**

The purpose of this Information Exchange Agreement (IEA) (Agreement) is to establish the terms, conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will disclose information to the undersigned issuer of one or more qualified health plans through a State-based Marketplaces (SBM Issuer) as authorized under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152) and referred to collectively as the Affordable Care Act (ACA).

CMS will disclose data to the SBM Issuer that is necessary for CMS to fulfill its responsibilities (on behalf of the Secretary for the Department of Health and Human Services) to facilitate advance payments of the premium tax credits and cost sharing reductions required by the ACA.

CMS and the SBM Issuer are each a “Party” and collectively, “the Parties,” to this Agreement. By entering into this Agreement, the Parties agree to comply with the terms and conditions set forth herein, and with applicable law.

In the event SBM Issuer is a party to that “Information Exchange Agreement between the Centers for Medicare & Medicaid Services and Issuers of Qualified Health Plans Offered Through State-based Marketplaces, CMS IEA No. 2017-45” (CMS IEA No. 2017-45), CMS and SBM Issuer agree that as of the Effective Date first written above, CMS IEA No. 2017-45 is terminated and the provisions of this Agreement will supersede and replace CMS IEA No. 2017-45 and will govern CMS’s disclosures of the data described in Attachment A to facilitate advance payments of the premium tax credits and cost sharing reductions required by the ACA.

**B. Legal Authority**

The following statutory and regulatory provisions provide legal authority for the specific disclosures contemplated under this Agreement:

1. This Agreement is executed pursuant to the Privacy Act of 1974 (5 U.S.C. § 552a), as amended, and the regulations and guidance promulgated thereunder, and the Office of Management and Budget (OMB) Circular A-130, "Managing Information as a Strategic Resource" (July 28, 2016).
2. Section 1411(g) of the Affordable Care Act (ACA) applies to application information collected under 1411(b);
3. Title 45 of the Code of Federal Regulations, Parts 155-157; and
4. Section 1412(c) of the Affordable Care Act, which authorizes payments of advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs) to issuers of qualified health plans on behalf of qualified persons.

### C. Definitions

For purposes of this Agreement, the following definitions apply:

1. "Advance Premium Tax Credit" or "APTC" means advance payment of the premium tax credit specified in section 36B of the Internal Revenue Code (as added by section 1401 of the Affordable Care Act) which is provided on an advance basis on behalf of an eligible individual enrolled in a qualified health plan (QHP) through a Marketplace in accordance with sections 1401 and 1412 of the Affordable Care Act.
2. "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).
3. "Breach" has the meaning contained in OMB M-17-12 (January 3, 2017), and means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information (PII) or (2) an authorized user accesses or potentially accesses personally identifiable information (PII) for an other than authorized purpose.
4. "CMS" means the Centers for Medicare & Medicaid Services.
5. "Cost-sharing reductions" or "CSRs" mean cost sharing reductions specified in section 1402 of the Affordable Care Act for an individual enrolled in a silver level plan through a Marketplace, or for an individual who is an Indian in accordance with section 1402(d) of the Affordable Care Act enrolled in a QHP through a Marketplace.
6. "Enrollee" means a qualified individual or qualified employee enrolled in a QHP through a Marketplace or in an Insurance Affordability Program as defined at 45 CFR 155.20.

7. “Exchange” and “Marketplace” mean an American Health Exchange established under sections 1311(b), 1311(d), or 1321(c)(1) of the ACA, including State-Based Marketplaces (SBMs), State-based Marketplaces on the Federal Platform (SBM-FPs), State Partnership Marketplaces (SPMs), and Federally-facilitated Marketplaces (FFMs).
8. “Health insurance issuer” or “issuer” means an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). This term does not include a group health plan.
9. “Incident,” or “Security Incident,” has the meaning contained in OMB M-17-12 (January 3, 2017) and means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.
10. “Personally Identifiable Information (PII)” means personally identifiable information as defined by OMB M-17-12 (Jan. 3, 2017), and refers to information that can be used to distinguish or trace an individual’s identity either alone or when combined with other information that is linked to or linkable to a specific individual.
11. “Qualified Health Plan” or “QHP” means a health plan that has in effect a certification that it meets the standards described in 45 C.F.R. Part 156, Subpart C issued or recognized by each Marketplace through which such plan is offered, in accordance with the process described in 45 C.F.R. Part 155, Subpart K.
12. “Secure Electronic Process” means that the information to be exchanged, once produced as a report from the source system, is stored, transmitted, and accessed only through systems that are encrypted. The implemented encryption must meet the FIPS 140-2 encryption standards. Such reports shall contain only the minimum necessary information to achieve the purpose of facilitating advance payments of the premium tax credits and cost sharing reductions as described in this Agreement.
13. “SBM” or “State-based Marketplace” means an Exchange established by a State under section 1321(b) of the ACA.
14. “System of Records” means the same as that term defined in the Privacy Act of 1974 at 5 U.S.C. §552a(a)(5), as amended. It is a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

## **II. DESCRIPTION OF THE DATA TO BE DISCLOSED**

CMS will provide data pursuant to this Agreement from the following System of Records:

1. The CMS Privacy Act System of Records, “Health Insurance Exchanges (HIX) Program” System No. 09-70-0560, 78 FR 63211 (10/23/13), \*[83 FR 6591](#) (2/14/18) which provides notice as to how CMS is permitted to disclose PII maintained in a System of Records.

### **III. DATA USAGE, DUPLICATION, REDISCLOSURE RESTRICTIONS, AND NOTICE REQUIREMENTS**

- A. The data to be disclosed under this Agreement is data CMS and the SBM Issuer need to fulfill their responsibilities as described in section I above and section III.B below, and will include only the PII that is described in Attachment A, entitled “Description of Data to be Disclosed by CMS to the State-based Marketplace Issuer.”
- B. The SBM Issuer shall use the PII disclosed by CMS pursuant to this Agreement only for the purposes authorized under this Agreement and to the extent necessary to accomplish those authorized purposes, and never to discriminate inappropriately. Specifically, the SBM Issuer may only use or disclose the data for the purposes described in section 1412 and 1402 of the Affordable Care Act and 45 C.F.R. §§ 156.430 and 156.440 for the purposes of verifying APTC and CSR payments, reconciling APTC and CSR data, and resolving any disputes related to the APTC and CSR program payments
- C. The SBM Issuer shall restrict access to the data obtained under this Agreement to only those authorized employees, contractors, agents, or other downstream entities who need such data to perform their official duties in connection with the purposes authorized under this Agreement; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in this Agreement (“Authorized Users”). Further, the SBM Issuer shall advise all Authorized Users who will have access to the data provided under this Agreement of the confidential nature of the data and the safeguards required to protect the data, and shall require all Authorized Users to comply with the terms and conditions set forth in this Agreement, and not to use, duplicate, disseminate, or disclose such data for any purpose not authorized under this Agreement.
- D. The SBM Issuer shall satisfy the requirement in 45 CFR 155.260(b)(2)(v) to bind any downstream entities (*e.g.*, contractors who will perform work on behalf of the SBM Issuer using the PII disclosed under this Agreement) by entering into written agreements with any downstream entities that will have access to PII as defined in this Agreement.
- E. CMS will disclose the data under this Agreement to the SBM Issuer through a Secure Electronic Process or another appropriate secure method and in compliance with all relevant provisions of the Privacy Act of 1974 (Title 5 U.S.C. § 552a) and its implementing regulations and guidance and NIST encryption standards for transmitting federal data.
- F. The data CMS will provide to the SBM Issuer must be protected by the SBM Issuer with reasonable operational, administrative, technical, and physical safeguards to ensure its integrity and to prevent any unauthorized or inappropriate access, use, or disclosure.

G. The SBM Issuer agrees to report any Breach of PII to the CMS IT Service Desk by telephone at (410) 786-2580 or 1-800-562-1963 or via email notification at [cms\\_it\\_service\\_desk@cms.hhs.gov](mailto:cms_it_service_desk@cms.hhs.gov) within 24 hours from knowledge of the Breach. Incidents must be reported to the CMS IT Service Desk by the same means as Breaches within 72 hours from knowledge of the Incident. In the event of an Incident or Breach the SBM Issuer must permit CMS to gather all information necessary to conduct all Incident response activities deemed necessary by CMS. Nothing in this Agreement should be construed to limit the ability of HHS to temporarily suspend delivery of the data under this Agreement to the SBM Issuer due to suspected or confirmed security risks and Incidents or Breaches.

#### **IV. SEVERABILITY**

If any term or other provision of this Agreement is determined to be invalid, illegal, or incapable of being enforced by any rule or law, or public policy, all other terms, conditions, or provisions of this Agreement shall nevertheless remain in full force and effect, provided that the data exchange contemplated hereby would not be affected in any manner materially adverse to any Party to this Agreement. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in an acceptable manner to both Parties, to the end that the transactions contemplated by this Agreement are executed to the fullest extent possible.

#### **V. PERSONS TO CONTACT**

##### A. Program and Policy Issues:

Deondra Moseley  
Director  
Division of Enrollment Payment Data  
Payment Policy & Financial Management Group  
Center for Consumer Information & Insurance Oversight  
Centers for Medicaid & Medicare Services  
7500 Security Boulevard  
Baltimore, MD 21224  
Mail Stop WB-22-75  
Phone: 410-786-4577  
E-Mail: [deondra.moseley@cms.hhs.gov](mailto:deondra.moseley@cms.hhs.gov)

##### B. Privacy and Agreement Issues:

Walter Stone  
CMS Privacy Act Officer  
Division of Security, Privacy Policy & Governance  
Information Security & Privacy Group

Office of Information Technology  
Centers for Medicaid & Medicare Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail Stop: N3-15-25  
Phone: 410-786-5357  
E-Mail: [walter.stone@cms.hhs.gov](mailto:walter.stone@cms.hhs.gov)

C. Privacy and Agreement Issues:

Barbara Demopulos, Privacy Advisor  
Division of Security, Privacy Policy and Governance  
Information Security and Privacy Group  
Office of Information Technology  
Centers for Medicaid & Medicare Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Mail-stop: N3-15-25  
Phone: 410-786-6429  
E-mail: [barbara.demopulos@cms.hhs.gov](mailto:barbara.demopulos@cms.hhs.gov)

D. Security Issues:

Devany Nicholls  
Baltimore Data Center ISSO  
Division of Operations Management  
Enterprise Infrastructure & Operations Group  
Office of Information Technology  
Centers for Medicaid & Medicare Services  
7500 Security Boulevard  
Baltimore, MD 21244-1859  
Mail Stop N1-19-21  
Phone: (410) 786-8189  
E-mail: [Devany.Nicholls@cms.hhs.gov](mailto:Devany.Nicholls@cms.hhs.gov)

E. The contact person for the SBM Issuer can be found on the Issuer'' signature page.

## **VI. EFFECTIVE DATE, TERM, MODIFICATION, AND TERMINATION**

### **A. Effective Date**

Upon signature by authorized officials of CMS and the SBM Issuer, this Agreement will be effective as of August 10th, 2019, and will remain in effect for five (5) years unless earlier terminated consistent with this Agreement.

### **B. Modification**

The Parties may modify this Agreement at any time by a written modification, mutually agreed upon by both Parties.

### **C. Termination with Notice by CMS**

CMS may terminate this Agreement for cause upon sixty (60) Days' written notice to the SBM issuer if the SBM issuer materially breaches any term of this Agreement as determined in the sole but reasonable discretion of CMS, unless the SBM issuer commences curing such breach(es) within such 60-Day period to the reasonable satisfaction of CMS in the manner hereafter described in this subsection, and thereafter diligently prosecutes such cure to completion. A SBM issuer's inability to perform due to a CMS error will not be considered a material breach. The 60-Day notice from CMS shall contain a description of the material breach and any suggested options for curing the breach(es), whereupon the SBM issuer shall have seven (7) Days from the date of the notice in which to propose a plan and a time frame to cure the material breach(es), which plan and time frame may be rejected, approved, or amended in CMS' sole but reasonable discretion. Notwithstanding the foregoing, the SBM issuer shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a 60-Day notice under this subsection more than three (3) times in any plan year, whereupon CMS may, in its sole discretion, immediately terminate this Agreement upon notice to the SBM issuer without any further opportunity to cure or propose cure. All provisions of this Agreement related to permissible uses and disclosures and the confidentiality of the data to be provided by CMS to the SBM Issuer will survive termination of this Agreement for both parties.

### **D. Assignment**

The SBM Issuer shall not assign its access to the data provided under this Agreement in whole or in part, whether by merger, acquisition, consolidation, reorganization, or otherwise, without the express, prior written consent of CMS, which consent may be withheld, conditioned, granted, or denied in CMS's sole and absolute discretion. If the SBM Issuer attempts to make such an assignment, such assignment shall be deemed void *ab initio* and of no force or effect, and the SBM Issuer shall remain legally bound hereto and responsible for any and all obligations under this Agreement. The SBM Issuer shall further be thereafter subject to such compliance actions as may otherwise be provided for under applicable law.

**VII. APPROVALS**

A. CMS Program Official

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits his/her respective organization to the terms of this Agreement.

<b>Approved By (Signature of Authorized CMS Program Official)</b>	
<b>Jeffery Grant</b> <b>Deputy Director for Operations</b> <b>Center for Consumer Information and Insurance Oversight</b> <b>Centers for Medicare &amp; Medicaid Services</b>	<b>Date:</b>



B. CMS Security & Privacy Official

The authorized security and privacy official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits his/her respective organization to the terms of this Agreement.

<b>Approved By (Signature of Authorized CMS Approving Official)</b>	
<b>Michael Pagels, Director Division of Security, Privacy Policy and Governance, and Acting Senior Official for Privacy Information Security Privacy Group Office of Information Technology Centers for Medicare &amp; Medicaid Services</b>	<b>Date:</b>

C. SBM Issuer Authorized Official

The authorized SBM Issuer program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, confirms that no verbal agreements of any kind shall be binding or recognized, and hereby commits his/her respective organization to the terms of this Agreement.

SBM Issuer:

---

Payee Identification Number(s):

---

By:

---

(Signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **ATTACHMENT A**

### **Description of Data to be Disclosed by CMS to the State-based Marketplace Issuer**

CMS will disclose to SBM Issuer data including the following:

- Enrollee's name
- Enrollee's Social Security Number (SSN)
- Enrollee's Zip Code
- Enrollee's Date of Birth
- Enrollee's Coverage Start and End Dates
- Rating Area in which Coverage Received
- Monthly APTC and CSR amounts per enrollee
- Individual Exchange Unique Identifier
- QHP Identifier
- Issuer Employer Identification Number (EIN)
- Issuer Name
- Issuer HIOS ID
- Issuer Payee ID
- Employer's Address
- Employer's EIN